

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

ELMER DAUGHERTY,

Claimant,

v.

Case No. 2:05-00853

WESTMORELAND COAL CO.,

Employer.

MEMORANDUM OPINION AND ORDER

Pending before the court is a motion by the claimant to substitute "the Estate of Elmer Daugherty" for "Elmer Daugherty" as claimant in this case. (See Doc. No. 19.) Claimant notes that the employer filed a suggestion of death on the record on December 12, 2005. (See id. ¶ 1.)

Since the suggestion was filed, counsel for claimant indicates that the estate of Elmer Daugherty has been established by the Clerk of the County Commission in Nicholas County, West Virginia, and that Hugh M. Daugherty, the son of Elmer Daugherty, has been appointed executor of the estate of Elmer Daugherty. (Id. ¶ 2.) Hugh M. Daugherty wants to proceed with this litigation, and has authorized counsel Robert F. Cohen, Jr., to continue representing the estate. (Id. ¶¶ 3, 6.)

Under Rule 25(a) of the Federal Rules of Civil Procedure, the court may order substitution of a party when a party moves


for substitution within 90 days of when a party's death was suggested upon the record. See Fed. R. Civ. P. 25(a).

Because the claimant's motion for substitution was made on March 9, 2006, less than 90 days after the December 12, 2005, suggestion of death on the record, the substitution of "the Estate of Elmer Daugherty" for "Elmer Daugherty" as claimant is appropriate. As such, the court **ORDERS** that the Estate of Elmer Daugherty, by Hugh M. Daugherty, Executor, be substituted as claimant in this case.

The Clerk is directed to send a copy of this Order to all counsel of record and to any unrepresented party.

It is **SO ORDERED** this 16th day of March, 2006.

Enter:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge